

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JODIE DEREK GRAGG,

Petitioner,

v.

KRAIG NEWMAN,

Respondent.

Case No. C07-5448RJB-KLS

REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED  
*IN FORMA PAUPERIS*

Noted for October 19, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Grays Harbor Correctional Facility, located at Montesano, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient funds with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny the application.

DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the district court has broad discretion in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when

1 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*,  
 2 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*  
 3 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),  
 4 *aff'd*, 503 F.2d 38 (10<sup>th</sup> Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

5 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur  
 6 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for  
 7 *habeas corpus*. The inmate account summary petitioner submitted with his application indicates that he  
 8 currently has a balance of \$29.93 in his inmate account, that he has received a total of \$95.00 from  
 9 outside sources in August 2007, and that he has received a total of \$253.50 from such sources for the year  
 10 2007, for an average of \$31.69 per month since January 2007. While the undersigned recognizes such  
 11 funds may not be great, given the fact that an inmate's basic needs are provided for while incarcerated  
 12 and the minimal filing fee required to proceed with this action (\$5.00), it is not unreasonable to expect  
 13 petitioner to pay that fee from those funds.

#### 14 CONCLUSION

15 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the  
 16 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,  
 17 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**  
 18 **thirty (30) days** of the court's order.

19 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),  
 20 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
 21 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
 22 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit  
 23 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **October 19,**  
 24 **2007**, as noted in the caption.

25 Dated this 20th day of October, 2007.

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28 Karen L. Strombom  
 United States Magistrate Judge